

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

SAPPHIRE BEACH RESORT AND MARINA  
CONDOMINIUM ASSOCIATION REVOCABLE  
TRUST, EDUARDO SINZ, TRUSTEE,

Plaintiff,

v.

ISAAC MARTIN, JR.,

Defendant.

Civil No. 2007-13

ATTORNEYS:

James M. Derr, Esq.

St. Thomas, U.S.V.I.

*Counsel for the Plaintiff*

Vincent A. Fuller, Jr., Esq.

St. Thomas, U.S.V.I.

*Counsel for the Defendant.*

ORDER

Gómez, C.J.

Before the Court is the motion of defendant, Isaac Martin, Jr. ("Martin") to dismiss the complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

**FACTS**

Sapphire Beach Resort and Marina Condominium Association,

LLC ("SBRMCOA") is an association of condominium and marina slip owners at the Sapphire Beach Resort & Marina on St. Thomas, Virgin Islands. Sapphire Beach Resort and Marina Condominium Association Revocable Trust (the "Trust") is a revocable trust for which plaintiff, Eduardo Sinz ("Sinz") is the trustee. The Trust is the assignee of all receivables of SBRMCOA, to include delinquent dues and assessments owed by unit owners to SBRMCOA.

Martin is the owner of Slip N-29 at SBRMCOA. Pursuant to the Virgin Islands Condominium Act, V.I. CODE ANN. tit. 28, § 901, et seq., SBRMCOA assessed common area charges and expenses to Slip N-29. Martin failed to pay the charges and expenses. SBRMCOA imposed charges, late fees, and interest in the amount of \$13,930.76 against Slip N-29 for the delinquent payments.

On June 13, 2007, the Trust, through Sinz as trustee, brought an action for debt and foreclosure against Martin. In its complaint, the Trust alleged that despite notice and demand, Martin failed to pay outstanding amounts that were due. The complaint further alleged that pursuant to V.I. CODE ANN. tit. 28,

§ 922(a),<sup>1</sup> the outstanding amounts became a lien upon Slip N-29.

The complaint also alleged:

[a]s of January 1, 2007, the total delinquency of Defendant MARTIN with respect to Slip N-29 is [\$13,930.76]. The fair market value of Slip N-29 is in excess of the sum or value of [\$75,000].

(Complaint at 2.)

On April 15, 2008, Martin filed the instant motion to dismiss for lack of subject matter jurisdiction. Martin argues that the Trust has failed to meet the requisite amount in controversy, \$75,000, and therefore, has failed to establish subject matter jurisdiction.

#### **DISCUSSION**

Title 28, section 1332(a)<sup>2</sup> provides this Court with subject matter jurisdiction over matters involving citizens of different

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<sup>1</sup> Section 922(a) provides in pertinent part:

All sums assessed by the Association of Apartment Owners but unpaid for the share of common expenses chargeable to any apartment shall constitute a lien on such apartment . . . . Such lien may be foreclosed by suit by the manager or Board of Directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property.

28 V.I.C. § 922(a).

<sup>2</sup> 28 U.S.C. § 1332 provides, in pertinent part: (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$ 75,000, exclusive of interest and costs, and is between- (1) Citizens of different States.

states when the amount in controversy exceeds \$75,000.

Therefore, the requirements for diversity jurisdiction are two-fold: first, the parties must have diversity of citizenship, and second, the amount in controversy must exceed \$75,000 exclusive of costs and interests.

Where a motion to dismiss is based on Federal Rule of Civil Procedure 12(b)(1), and the motion challenges the district court's jurisdiction, the court is not confined to the allegations in the complaint, but can consider other evidence, such as affidavits, depositions, and testimony, to resolve factual issues related to jurisdiction. *See Mortensen v. First Federal Sav. and Loan Ass'n.*, 549 F.2d 884, 891 (3d Cir. 1977) (stating that because at issue is the very power of the trial court to hear the case, a court is free to weigh evidence beyond the allegations in the complaint). Furthermore, "no presumptive truthfulness attaches to plaintiffs allegations" and "the plaintiff will have the burden of proof that jurisdiction does in fact exist." *Id.*

The jurisdictional amount in controversy can be satisfied if the amount of damages exceeds \$75,000. 28 U.S.C. 1332(a); *Williams v. Tutu Park Ltd.*, Civ. No.1999-138, 2005 U.S. Dist. LEXIS 10591, at \*5 (D.V.I. May 11, 2005). If it appears from the pleadings or other evidence to a "legal certainty that the claim

is really for less" than that required for diversity jurisdiction, and the plaintiff cannot refute the evidence, the federal suit should be dismissed. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938); *Nelson v. Keefer*, 451 F.2d 289 (3d Cir.1971).

### **ANALYSIS**

Martin argues that the Trust has failed to satisfy the jurisdictional amount in controversy because the complaint alleges damages that do not exceed \$75,000. Specifically, the complaint only alleges damages in the amount of \$13,930.76.

In determining whether the claim exceeds \$75,000, exclusive of interests and costs, the court must assess "the value of the rights being litigated," *Angus v. Shiley Inc.*, 989 F.2d 142, 146 (3d Cir. 1993), or "the value of the object of the litigation," *Hunt v. Wash. State Apple Advers. Comm'n*, 432 U.S. 333, 347 (1977); see also *Coregis Ins. Co. v. Schuster*, 127 F. Supp. 2d 683, 686 (E.D. Pa. 2001) (quoting 14B C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* 77 (3d ed. 1998)) ("It is well-settled by numerous judicial decisions by the Supreme Court, the court of appeals, and countless district courts that the amount in controversy for jurisdiction purposes is measured by the direct pecuniary value of the right that the plaintiff seeks

to enforce or protect or the value of the object that is the subject matter of the suit." ).

Here, the Trust seeks to foreclose on a lien in the amount of \$13,930.76. However, the Trust opposes Martin's argument and avers that it has met the jurisdiction amount in controversy because Slip N-29 is valued over \$75,000. In support of that argument, the Trust has attached to its opposition a sales report which indicates that other slips at SBRMCOA have sold at prices from \$100,000 to \$131,878. The Trust argues that in debt and foreclosure actions, the jurisdictional amount is determined by the value of the property to be foreclosed rather than by the alleged amount due. To support this theory, the Trust cites *Black v. Jackson*, 177 U.S. 349, 356 (1900), which held that "in determining the value of the matter in dispute we should look at the value of the land, not simply at the value of the right of present possession."

The Trust's reliance on *Black* is misplaced. First, *Black* dealt with title to real property as opposed to foreclosure of a lien on real property. It is true that in actions for declaratory relief or to quiet title to property, the value of the property is determinative of the amount in controversy. See *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 347 (1977) ("In actions seeking declaratory . . . relief, it is well

established that the amount-in-controversy is measured by the value of the object of the litigation." ).

However, this is an action for debt and foreclosure. In an action for debt and foreclosure, the amount in controversy is determined by the debt claimed. *See, e.g., Farmer's Bank of Alexandria v. Hooff*, 32 U.S. 168, 170 (1833) (dismissing appeal for lack of jurisdiction where the amount in controversy, the money owed under the deed of trust, was less than the jurisdictional amount although the value of the property exceeded the jurisdictional amount).

In *Farmer's Bank*, an action was filed to foreclose on a deed of trust on a lot, which was given to secure the payment of a sum of money. *Id.* The sum secured by the deed of trust was less than \$1,000, which was the jurisdictional amount at the time. The appellant argued that there was jurisdiction because the value of the lot was in excess of \$1,000. *Id.* The Court held that "[t]he real matter in controversy is the debt claimed in the bill; and though the title of the lot may be inquired into incidentally, it does not constitute the object of the suit." *Id.*

Although the Trust's complaint alleges that the good faith value of the slip exceeds \$75,000, title to the slip is not in dispute, nor is the Trust seeking a superior title to the slip. Rather, the Trust seeks to foreclose on a lien against the slip.

The amount in controversy, therefore, is the debt of \$13,930.76. See *id.* As such, it appears to a legal certainty that the Trust's claim is less than the required minimum jurisdictional amount. Accordingly, the Court lacks subject matter jurisdiction over this action.

**CONCLUSION**

For the foregoing reasons, it is hereby

**ORDERED** that Martin's motion to dismiss is **GRANTED**; and it is further

**ORDERED** that the Clerk of the Court shall **CLOSE** this case.

s/ \_\_\_\_\_  
Curtis V. Gómez  
Chief Judge